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Motorized Recreation on Bureau of Land Management and Forest Service Lands

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Summary

The growing and diverse nature of recreation on federal lands has increased the challenge of balancing different types of recreation with each other and with other land uses. Motorized recreation on lands managed by the Bureau of Land Management (BLM) and the Forest Service (FS) has been controversial, with issues centering on access and environmental impacts. Congress, as well as the Administration, has addressed motorized recreation on these federal lands.

The use of off-highway vehicles (OHVs) on FS and BLM land is governed by a number of authorities, including law, executive orders, agency regulations and policies, land management plans, and area-specific decisions. Both agencies decide the extent of allowed OHV use in particular areas through their planning processes. Under BLM regulations, the agency has been designating public lands as open, limited, or closed to OHV use. Similarly, under FS regulations governing OHVs, the FS is designating roads, trails, and areas open for OHV use and prohibiting OHV use outside the designated system. The designations for some BLM and FS lands have been contentious.

BLM also has been addressing motorized recreation as part of a broader effort to manage all modes of travel and public access, including through the issuance of a 2011 manual and a 2012 handbook on travel and transportation management. The goal of BLM's Comprehensive Travel and Transportation Management program is to provide varied transportation routes for access to BLM lands and provide areas for a variety of motorized and non-motorized forms of recreation, while protecting sensitive areas. Travel and transportation management plans are developed for particular areas. Also, in response to recommendations of the Government Accountability Office regarding OHV use on federal lands, BLM has taken actions in areas including planning, law enforcement, and communication with the public.

The FS continues to develop motor vehicle use maps showing where motor vehicle use is allowed, based on its 2005 travel management regulations. These regulations continue to be under debate, with some asserting that they do not sufficiently protect national forest lands from damage resulting from OHVs, and others contending that motorized access is too restricted. Similarly, some of the agency's travel management plans have been challenged for either being too restrictive or not restrictive enough.

One bill with provisions on motorized recreation on FS lands (H.R. 145) has been introduced in the 113th Congress to date. In the 112th Congress, no general legislation on OHV activities on BLM and FS lands was introduced. However, a variety of legislative measures sought to regulate OHV use on particular lands administered by the BLM, the FS, or both agencies. For instance, some measures relating to BLM lands sought to establish recreation areas in general, or OHV areas in particular. Other bills provided for conveyance of BLM land for recreation purposes, including motorized recreation. Measures pertaining to FS lands addressed motorized recreation in areas with special designations, including wilderness. Other FS bills sought to designate other types of areas, such as special management areas and recreation management areas, and govern the use of motorized vehicles in those areas. Other bills contained varied provisions relating to motorized recreation in a particular national forest.

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Introduction

Background

The federal government owns approximately 635 million acres of federal land in the United States. Of the total, the Bureau of Land Management (BLM) in the Department of the Interior (DOI) owns the largest amount—247.5 million acres, primarily in the West. The Forest Service (FS) in the Department of Agriculture owns the second-largest amount—193.0 million acres.¹ The BLM manages the public lands and the FS manages the national forests for varied purposes relating to the preservation, development, and use of the lands and natural resources. These purposes include livestock grazing, wild horses and burros, recreation, timber, fish and wildlife, cultural resources, conservation, and mineral exploration and development.

The preservation/use dichotomy is a focal point for debate over recreation on BLM and FS lands. Increased recreation, and allegations of overuse in some areas, contribute to disagreement on issues of access, regulation, integrity of natural and cultural resources, and extent of motorized versus nonmotorized recreational activities. Recreation debates also may arise in areas managed by other federal agencies, such as the National Park Service, and in the context of lands within cross-cutting systems, such as the National Trails System, administered by the FS, NPS, and BLM, often in cooperation with state and local authorities.

The population growth and development in western states, the proximity of many urban areas to public lands, and the growing popularity of outdoor recreation have translated into high demand for a variety of recreational opportunities on federal lands and waters. BLM, for example, reported that over 55 million people live within 25 miles of its National System of Public Lands and that two-thirds of BLM-administered lands are within 50 miles of an urban area.² Agency figures indicate an overall increase in recreational visits to federal lands in recent decades. The FY2013 DOI budget documents cited approximately 478 million annual recreational visits to DOI managed lands, including 57.8 million visits to BLM lands.³ The FS reported approximately 201.6 million annual recreational visits to National Forest System lands (including wilderness).⁴

Access to BLM, FS, and other federal lands for a variety of recreational purposes is generally viewed as important for fostering public health, public support for land management, and a stable economic base for communities that depend on recreation and tourism.⁵ Some recreational

¹ For data on federal land ownership, including the change over the past 20 years and acreage by state, see CRS Report R42346, *Federal Land Ownership: Overview and Data*. For an overview of how federal lands and resources are managed, the agencies that administer them, and the authorities under which these agencies operate, see CRS Report R40225, *Federal Land Management Agencies: Background on Land and Resources Management*.

² This figure is derived from *The Bureau of Land Management's Outdoor Recreation and Visitor Services Accomplishments Report, 2006-2008*, on the agency's website at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/recreation_images/brochures.Par.96416.File.dat/Accomplishments%20Report.pdf. According to BLM, as of December 10, 2012, these estimates were the most current and reliable available.

³ Visitation statistics for DOI lands appear on p. DO-22 and DH-7 of *The Interior Budget in Brief, Fiscal Year 2013*, at http://www.doi.gov/budget/appropriations/2013/highlights/upload/2013_Highlights_Book.pdf. The document refers to these figures as “annual,” rather than specifying a particular fiscal year.

⁴ This figure is for FY2011, the most recent fiscal year available. See http://www.fs.fed.us/recreation/programs/nvum/nvum_national_summary_fy2011.pdf, *National Visitor Use Monitoring Results: USDA Forest Service National Summary Report* as of May 22, 2012.

⁵ For information on the effects on the economy of a variety of types of recreation, see *The Outdoor Recreation Economy*, Outdoor Industry Association, 2012, at <http://atfiles.org/files/pdf/Outdoor-Recreation-Economy->

advocates have expressed support for increased access to BLM and FS lands on the grounds that in some areas lands are inaccessible or access is limited. Recreational access also has enhanced interest in protecting the ecological integrity of federal lands from environmental harm as a result of recreational use.

This report concentrates on motorized recreation on BLM and FS lands.⁶ Over the last half century or so, forms of motorized recreation—snowmobiles, personal watercraft, other off-highway vehicles—and a variety of newer recreational activities, such as mountain biking, snow biking, heli-skiing, kite skiing, and hang gliding, have evolved and gained in popularity. These new forms intersect with the many popular traditional forms of recreation, including water-based activities (fishing, canoeing, kayaking, rafting, boating, etc.) and a variety of land-based pursuits (birdwatching, camping, hiking, hunting, horseback riding, rock climbing, etc.).

The use of off-highway vehicles (OHVs) on federal lands and waters has been particularly contentious, and lawsuits have challenged their management. OHV supporters contend that these vehicles provide outdoor recreation opportunities for the disabled, senior citizens, and others with mobility limitations; allow visitor access to hard-to-reach natural areas; bring economic benefits to communities serving riders; and, for snowmobiles, allow increased access to sites during the winter season. They assert that technological advances do and will continue to limit noise and pollution. Critics of OHVs point to the beneficial economic impact of nonmotorized recreation on local communities. They also raise environmental concerns, including potential damage to wildlife habitat and land and water ecosystems, such as the impact of dust on winter snow melts and water supply; noise, air, and water pollution; and a diminished experience for recreationists seeking quiet and solitude and/or hunting and fishing opportunities.

Clashes over off-road use could be intensifying in some areas for riders, law enforcement officers, and property owners as OHV ridership increases and the amount of land available to OHVs diminishes. For example, BLM and FS are identifying lands for OHV use and limiting or prohibiting OHV use in other areas. A 2009 Government Accountability Office (GAO) report examined OHV use and impacts on federal lands, and documented agency OHV enforcement, planning, and management challenges.⁷ Further, development has reduced availability of private lands to OHVs. As limitations on land management agency staffs and budgets, and the remoteness of many public lands, exacerbate enforcement challenges, some interest groups have worked together to identify successful enforcement strategies or to develop educational guidance for shared trail use and safety.

Federal OHV challenges and approaches to their management also are reflected in individual state legislative efforts to address OHV management and law enforcement. State measures focus on a range of actions—safety, wildlife habitat and private property protection, registration

OIA2012.pdf.

⁶ For information on motorized recreation in the National Park System, see CRS Report R42955, *Motorized Recreation on National Park Service Lands*. For information on legislation in the 112th Congress pertaining to certain other types of recreation on federal lands, see CRS Report R42569, *Hunting, Fishing, and Recreational Shooting on Federal Lands: H.R. 4089 and Related Legislation*, and CRS Report R42751, *Hunting, Fishing, Recreational Shooting, and Other Wildlife Measures: S. 3525*. For background on recreation fees charged by the BLM and FS and other federal agencies, see CRS Report RL33730, *Recreation Fees Under the Federal Lands Recreation Enhancement Act*.

⁷ The report is on the GAO website at <http://www.gao.gov/new.items/d09509.pdf>.

requirements and fees, and collaborative approaches to enforcement.⁸ Some measures have been challenged.⁹

Authorities and Administrative Actions

Two executive orders define and generally guide OHV use on federal lands. The first (E.O. 11644, February 8, 1972) defines an off-road vehicle, now commonly referred to as an off-highway vehicle, as “any motorized vehicle designed for or capable of cross country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain,” with exceptions for any registered motorboat or authorized or emergency vehicles. It was issued to “establish policies and provide for procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed so as to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.” The order directed each agency to develop and issue regulations to carry out this purpose and to provide for the designation of areas and trails on which OHVs may be permitted, and areas in which such vehicles would not be permitted. Agencies were to monitor the effects of OHV use and amend or rescind area designations or other actions taken pursuant to the order as needed to further the policy of the executive order.

A subsequent executive order (E.O. 11989, May 24, 1977) amended the 1972 order to exclude military, emergency, and law enforcement vehicles from the definition of off-road vehicles (to which restrictions would apply). It provided authority to immediately close areas or trails if OHVs were causing or would cause considerable damage to the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails. Areas could remain closed until the manager determined that “the adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.” Also, each agency was authorized to adopt the policy that areas could be closed to OHV use except for those areas or trails that are specifically designated as open to such use. This meant that only open areas would have to be marked, a lesser burden on the agencies.

BLM and FS managers formulate guidance on the nature and extent of land uses, including OHV use, through regulations, national policies, land and resource management plans, and area-specific decisions. Guidance for each agency, the planning process for designating OHV use, and related agency actions are discussed in the respective BLM and FS “Administrative Actions” sections below. In addition, in some cases, the BLM and FS jointly address OHV use on their lands. For instance, an interagency plan governs OHV use on lands in Montana, North Dakota, and South Dakota. Also, in central Oregon, one BLM district (Pineville) and two national forests (Deschutes and Ochoco) jointly manage OHV operations on their lands. Joint management approaches, where federal lands are intermingled, can promote consistency and public

⁸ Responsible Trails America provides information on state visible identification requirements for OHVs and on state legislative actions (June 5, 2012) at <http://www.responsibletrails.org/2012-visible-id-report.html> and http://www.responsibletrails.org/images/2012_50staterreport_final.pdf. The Specialty Vehicle Institute of America posts a chart of “State All-Terrain Vehicle Requirements” (February 2012) at <http://www.svia.org>.

⁹ For instance, New Jersey’s efforts to deter illegal ATV use via more costly penalties and fees, to be levied in conjunction with the creation of three public riding areas in the state’s north, central, and southern regions, faced pushback from residents opposed to ATV parks in their communities. “N.J. hits hurdle in curbing illegal ATV use,” *NorthJersey.com* (October 17, 2010), at http://www.northjersey.com/news/105123849_ATVs__nature_collide.html. As another example, an Idaho measure sought to restrict the Idaho Fish and Game Department’s authority to regulate use of all-terrain vehicles on trails during hunting. The measure was opposed by some on the assertion that ATV regulation would be necessary for managing and protecting wildlife. “Idaho Senate to debate bill to expand ATV hunts, curb Fish and Game authority,” *The Associated Press* (March 21, 2012), at http://www.necn.com/03/21/12/Senate-panel-approves-bill-to-expand-ATV/landing_politics.html?&ID=519266aad34042b7aec0534921cec72.

understanding of OHV guidance. However, BLM and FS lands are different, and they are governed by separate authorities, making complete consistency on vehicular travel management difficult to achieve.

Legislative Activity

Congress has addressed motorized recreation on both BLM and FS lands (as well as other federal lands) through legislation and oversight hearings. Some measures introduced in the 112th Congress would have established new land units with both BLM and FS lands and governed motorized recreation in these areas. For instance, H.R. 5545 and S. 3375 sought to establish the Berryessa Snow Mountain National Conservation Area in California, with BLM and FS lands, and to generally limit the use of motorized vehicles in the area to designated roads and trails. Legislation primarily or exclusively affecting only BLM or only FS lands is discussed in their respective sections below.¹⁰

A House subcommittee hearing on June 22, 2011, addressed opportunities for recreation on federal land and the economic impact of such recreation. A particular focus was on OHV recreation on BLM and FS lands, with issues covering the extent to which additional federal lands should be open to OHV use, agency OHV planning and designation processes, how to achieve balance among OHV and other recreational users of federal lands, the effects of OHV use on nearby communities and the economy more broadly, and sources of funding for OHV use (e.g., state OHV registration programs) and the purposes for which those funds are used.¹¹

Further, the 2009 GAO report on OHV use on agency lands included several recommendations to the BLM and FS for providing OHV opportunities while protecting resources.¹² BLM and FS actions on these recommendations also are discussed in their respective sections below.

Motorized Recreation on BLM Land¹³

Background

The proximity of BLM lands to many areas of population growth in the West has contributed to an increase in recreation on some of these lands.¹⁴ BLM lands are used for diverse forms of recreation, including hunting, fishing, visiting cultural and natural sites, birdwatching, hiking, picnicking, camping, boating, mountain biking, and off-road vehicle driving. The growing and diverse nature of recreation on BLM lands has increased the challenge of managing different types of recreation, such as low impact (e.g., hiking) and high impact (e.g., OHV) uses. It also has increased the challenge of managing recreation and other land uses. For instance, in some areas recreation and energy development have come in conflict, with hunters, fishermen, outfitters and

¹⁰ Bills pertaining to motorized access to federal lands are not reflected in this report. For example, H.R. 6086 would have required federal land management agencies to report on access to lands, including motorized access, for hunting, fishing, and other recreational purposes.

¹¹ Testimony from the hearing is available on the website of the House Committee on Natural Resources at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=246553>.

¹² Recommendations for executive action are on pages 42-43 of the report, on the GAO website at <http://www.gao.gov/new.items/d09509.pdf>. GAO reports the status of agency action on its recommendations at <http://www.gao.gov/products/GAO-09-509#recommendations>. As of December 18, 2012, GAO reported that its recommendations are open/in process.

¹³ This section was prepared by Carol Hardy Vincent, Specialist in Natural Resources Policy.

¹⁴ BLM lands were designated as the National System of Public Lands by a Secretarial Order dated December 16, 2008.

guides, and other recreationists at odds with energy producing interests seeking to maintain or increase energy development on public lands.

Motorized OHV use, including use of dirt bikes and all-terrain vehicles, is a major recreational use of BLM lands that has been controversial. Controversy exists in various areas throughout the West, such as the Canyonlands areas in Utah, and the Western Mojave Desert in California. While motorized user groups often have opposed restrictions on OHV use, many environmentalists have been concerned about harm to natural and cultural resources. In some areas, OHV use may conflict with those engaged in other types of recreation, such as hiking, who seek quiet and solitude on agency lands. There are also differing views on how effectively OHV authorities are being enforced. While BLM employs a variety of means of enforcement, including monitoring, law enforcement, signing and mapping, and emergency closures of routes, enforcement may be impeded in some locations due to their remoteness, insufficient signs, inadequate staff and resources, and other factors.

Administrative Actions

BLM manages about 247.5 million acres of land.¹⁵ Guidance on OHV use on BLM lands is provided in law, executive orders, and agency regulations and policies.¹⁶ Under agency regulations (43 C.F.R. §8340), BLM has been designating public lands as open, limited, or closed to OHV use. As of November 30, 2012, the following designations had been made: closed, where OHV use is prohibited, 13.1 million acres (6% of designated area); limited, where OHV use is in some way restricted, 146.6 million acres (65%);¹⁷ and open, where OHV use is permitted anywhere, 66.0 million acres (29%).¹⁸ The remaining acres of BLM land (mostly in Alaska) are not currently designated. Because BLM management plans do not address motorized use in these undesignated areas, there are no restrictions. Other regulations govern OHV use in particular areas. For instance, BLM has supplementary rules for its lands in Oregon and Washington, which include guidance on OHV use. On August 18, 2010, the agency issued revisions to these rules (effective September 17, 2010), in part to address OHV use in the Juniper Dunes OHV/ATV area in Washington.

Over the past decade, BLM has issued other types of guidance dealing with transportation on its lands. For instance, in 2001 the agency issued the *National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands*. The strategy has multiple purposes, including to guide land managers in resolving OHV issues; to promote consistency of OHV decision-making; to highlight needed staff and funding for OHV management; to reduce conflicts among land users; to promote responsible OHV use and reduce habitat degradation; and to lead to an update of OHV regulations (which has not occurred to date).¹⁹ More recently, in 2011, BLM issued a manual on travel and transportation management, and in 2012 the agency released a related handbook, to

¹⁵ This figure is current as of September 30, 2011, and is the most recent figure available.

¹⁶ Guidance affecting travel management on BLM lands, including laws, executive orders, regulations, and policies, are on the BLM website at http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/travel_management/travel_mgt_guidance.html.

¹⁷ This figure primarily reflects where motorized vehicles are restricted to particular roads and trails.

¹⁸ Percentages are based on the total acreage designated (approximately 225.7 million acres), rather than the total acreage managed by BLM (approximately 247.5 million acres). This information was obtained from BLM on November 30, 2012.

¹⁹ Another plan, the *National Mountain Bicycling Strategic Action Plan*, addresses mountain bicycling and other muscle-powered mechanical transport. It provides guidance to BLM managers for addressing mountain bike issues, such as how to make effective use of partnerships and develop trails in their areas.

cover planning and management of all modes of travel and public access needs.²⁰ The documents are intended to serve as a guide for BLM field offices to improve travel planning, signing, mapping, and travel information. Further, the BLM's National Training Center has initiated a training program on travel and transportation planning and management for BLM field units. Seven training sessions were conducted in FY2012 and 13 are planned for FY2013.

BLM manages transportation on its lands through a process described as Comprehensive Travel and Transportation Management.²¹ Goals include providing varied transportation routes for access to BLM lands and providing areas for a variety of motorized and non-motorized forms of recreation, while protecting sensitive areas. Travel and transportation management plans are developed for particular areas. As of September 30, 2011, 142 BLM areas have completed travel management plans. These plans average roughly 250,000 acres, and together cover about 32.5 million acres. BLM expects to complete a total of 554 plans covering 231 million acres, with two-thirds of BLM lands expected to have plans in place by 2020.²² Implementation of travel management plans involves issuing maps; posting signs; educating land users; constructing, reconstructing, and maintaining roads and trails; monitoring impacts; rehabilitating damaged areas; and enforcing restrictions.

BLM makes OHV designations during the planning process, on an area-by-area basis, and such designations often have been contentious and complex. The agency is in the midst of a multi-year effort to develop and update land use plans, because many plans do not currently address OHV use and other relatively recent issues. For instance, in November 2008, 6 of the 11 BLM field offices in Utah released resource management plans (RMPs) governing land uses in those areas.²³ Together the plans cover about 10 million acres in the eastern half of Utah. OHVs were a major issue addressed during the process, as part of travel management planning for the areas. The plans nearly eliminate areas open to cross-country OHV travel. Specifically, only 0.2% of the total acreage is open to cross-country travel, according to BLM. Instead, the plans largely limit OHV use to designated routes, although they close additional areas to OHV use. The plans also call for the establishment of 31 new Special Recreation Management Areas, where the combination of a high level of specific recreational activity and valuable natural resources would require more intensive management. In addition, OHV use has been a consideration in many on-going plan revisions efforts across the West, for instance in the Carson City District in Nevada and the Imperial Sand Dunes Recreation Area in California,²⁴ and in recently completed plan revisions, such as for lands administered by the Taos field office in northern New Mexico.²⁵

On November 19, 2010, BLM released a report on its review of procedures for issuing special use permits for OHV racing on its lands. The report, together with recommendations and changes in

²⁰ The BLM Travel and Transportation Manual is on the BLM website at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_manual.Par.38105.File.dat/1626.pdf. The BLM Travel and Transportation Handbook is on the BLM website at http://www.blm.gov/pgdata/etc/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.34786.File.dat/8342.pdf.

²¹ Information on BLM's travel management program is on the agency's website at http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/travel_management.html.

²² This information was obtained from BLM on November 30, 2012.

²³ Information on the plans, and the text of the plans, are available on the BLM website at <http://www.blm.gov/ut/st/en/prog/planning.html>. These plans were challenged in court. For information on BLM land use planning generally and links to RMPs by state, see http://www.blm.gov/wo/st/en/prog/planning/planning_overview.html.

²⁴ For information on these and other on-going land use plan revisions, many of which address OHV use, see the BLM website at http://www.blm.gov/wo/st/en/prog/planning/planning_overview/land_use_plan_register.html.

²⁵ For information on the Taos Resource Management Plan, approved on May 24, 2012, see the BLM website at http://www.blm.gov/nm/st/en/fo/Taos_Field_Office/Taos_Planing/taos_rmp.html.

guidance,²⁶ stemmed from a review following a deadly accident in August 2010 in the Johnson Valley OHV open area in Southern California, in which a truck driver is alleged to have exceeded the authorized speed, veered off course, and killed and injured spectators. Agency actions included an investigation of the accident, an examination of options to increase safety for spectators, a review of then pending and approved requests to race on BLM lands, an evaluation of the special recreation permit program, and an increase in the onsite presence of BLM staff at motorized races. Issues for Congress include the adequacy of safety provisions in special use permits and their enforcement by BLM; the extent of penalties for permittees who violate the terms of their permits; and the role of BLM staff at racing events.

BLM developed a summary of planned actions in response to the GAO recommendations in its 2009 report on OHV use on federal lands,²⁷ and has undertaken related actions. One of the GAO recommendations was for the establishment of performance measures and time frames for carrying out OHV goals. In response, BLM sought to develop goals and strategies that are results-driven and developed a travel management action plan with an implementation schedule to guide and accelerate the completion of all travel management plans.²⁸ On August 25, 2011, for instance, BLM issued an instruction memorandum requiring all state directors to update schedules for travel and transportation management planning and implementation and to report on accomplishments.²⁹ In response to the GAO recommendation to improve communication with the public about OHV use, BLM developed a travel and transportation management manual and a related handbook, as discussed above. In response to the GAO recommendation to enhance law enforcement of OHV use, BLM examined fines for OHV related violations and expressed an intent to seek changes where fines are inconsistent or insufficient.

Legislative Activity

No legislation pertaining to motorized recreation on BLM lands has been introduced in the 113th Congress as of January 16, 2013.

In the 112th Congress, no general legislation on OHV activities on BLM lands was introduced. However, a variety of 112th Congress measures would have affected OHV use, or recreation more broadly, in particular BLM areas. Some of these bills sought to establish recreation areas in general or OHV areas in particular. As one example, S. 173 would have established the Sacramento River National Recreation Area in California, with motorized vehicles generally limited to routes designated by the management plan. Similarly, a second bill, H.R. 6286, would have designated the Clear Creek National Recreation Area in California, with motorized vehicles generally permitted on roads, trails, and areas designated by the management plan. The legislation called for a user fee program for motorized vehicle use, with revenues used for “management and improvement” of the area. A third example, S. 138—the California Desert Protection Act of 2011—would have governed conservation, development, and recreation in the California Desert Conservation Area, including OHV use, in part through designation of off-highway vehicle recreation areas.

²⁶ A press release on the report, with links to the report and the Instruction Memorandum No. 2011-019, are on the BLM website at http://www.blm.gov/wo/st/en/info/newsroom/2010/november/NR_11_19_2010.html.

²⁷ U.S. Dept. of the Interior, Office of the Secretary, unpublished correspondence to Members of Congress, October 27, 2009.

²⁸ Some of the information in this section on the BLM response to GAO’s recommendations was obtained by phone on September 21, 2011, from Rob Perrin, BLM Trails and Travel Management Program Lead, Recreation and Visitor Services Division.

²⁹ Instruction Memorandum No. 2011-171, issued August 25, 2011.

Other bills that provided for the expansion of BLM protected areas addressed motorized use in the areas. In an expansion of the California Coastal National Monument, H.R. 4969 generally would have limited motorized vehicles to roads and trails designated for their use. The Subcommittee on National Parks, Forests, and Public Lands of the House Committee on Natural Resources held a hearing on this bill on September 11, 2012.

Other bills provided for conveyances of BLM land for recreation purposes. For example, H.R. 3815 and S. 617 provided for conveyance of BLM land to the county of Elko, Nevada, for use as a motocross, bicycle, OHV, or stock car racing area or for other recreation or community purposes. A Senate subcommittee held a hearing on S. 617 on May 18, 2011. H.R. 6072, S. 1475, and S. 3346 would have conveyed BLM land to Clark County Nevada for the establishment of a park for OHV recreation, including for races, competitive events, and training. The measures also would have renamed BLM's Nellis Dunes area as the "Nellis Dunes [National] Off-Highway Vehicle Recreation Area."³⁰ A provision of P.L. 112-239 pertained to a proposal to expand a Marine Corps training range in California onto lands within BLM's Johnson Valley OHV area. The provision would have limited funding for the transfer of land or development of a new training range on adjacent land until the Secretary of the Navy reported to Congress on the issue, including on the impact of the proposal on OHV users of the lands. The Senate-passed version of the bill did not contain a similar provision.

Motorized Recreation in the National Forests³¹

Background

The national forests are managed by the USDA Forest Service (FS) for a variety of uses, including many types of recreation—sightseeing, OHV use, backpacking, and more—while preserving the productivity of the lands. Recreation use continues to grow, with OHV use among the fastest growing uses.³² However, OHV use is still substantially less than other, non-motorized forms of recreation in the national forests.³³

The various uses and values of the national forests sometimes conflict with one another. For example, timber harvesting and OHV use can affect birdwatching and sightseeing, and can degrade water quality in certain settings. Decisions about what uses are allowed, and when and where, are made in comprehensive land and resource management plans prepared for each unit of the National Forest System, and for each project. Because of multiple efforts to modify the planning regulations, many plan revisions have been delayed. Much of the attention has been focused on motorized recreation, because of the potentially significant impacts of motorized recreation on other values.

³⁰ Only S. 1475 would include "National" in the title.

³¹ This section was prepared by Katie Hoover, Analyst in Natural Resources Policy.

³² H. Ken Cordell, Carter J. Betz, Gary T. Green, and Becky Stevens, *Off-Highway Vehicle Recreation in the United States, Regions and States* (Athens, GA: FS Southern Research Station, February 2008), at <http://www.fs.fed.us/recreation/programs/ohv/IrisRec1rpt.pdf>, the most recent data available.

³³ John C. Adams and Stephen F. McCool, "Finite Recreation Opportunities: The Forest Service, the Bureau of Land Management, and Off-Road Vehicle Management," *Natural Resources Journal*, vol. 49 (Winter 2009), pp. 45-116.

Administrative Actions

The FS manages about 193 million acres of land.³⁴ Federal guidance on OHV use in E.O. 11644 and E.O. 11989, as described in the introduction to this report, was incorporated into FS regulations.³⁵ Despite this guidance, not all forest plans had identified areas as open or closed to OHVs, and local practices as to OHV use vary. In 2004, the FS Chief identified *unmanaged recreation*—“increasing use of the national forests for outdoor activities ..., including the use of off-highway vehicles”—as a threat to the nation’s forests and grasslands. According to the FS, OHV use has created many unauthorized roads and trails, which can be unsafe and harmful to other resources.

In 2005, the FS finalized regulations to *require* forest plans to identify a system of roads, trails, and areas available for motorized vehicle use and prohibit the use of OHVs and other motorized vehicles outside the designated system.³⁶ Subpart A of the regulations requires the agency to identify the minimum road system needed for safe and efficient travel and for the protection, management, and use of national forest system lands.³⁷ Subpart B of the regulations requires the FS to designate those roads, trails, and areas where motor vehicle use is allowed and to identify them on a motor vehicle use map (MVUM).³⁸ Subpart C of the regulations makes management of over-snow vehicles (e.g., snowmobiles) optional.³⁹ As of December 2012, MVUMs based on the new regulations were completed for 93 of the 114 administrative units in the National Forest System, representing 82% of FS lands.⁴⁰ As of July 2008, 100 million acres of national forest lands (52%) were generally open to OHV use, including 64 million acres open to cross-country use.⁴¹ More recent data are not available.

Opinions continue to be divided over the importance and impact of the travel management regulations. Some assert that the regulations do not go far enough, preferring that all OHV uses be prohibited in the national forests, because OHVs can damage national forest lands and resources. In August 2010, several groups requested the FS to end the snowmobile exemption from the travel management regulations, but the agency denied the request in March 2011.⁴² Legal action continues, with a lawsuit filed against the Forest Service in federal court in November, 2012.⁴³ Others counter that the regulations penalize the majority of OHV users that

³⁴ This figure is current as of September 30, 2012. U.S. Forest Service, *Land Areas of the National Forest System*, FS-383, January 2013, <http://www.fs.fed.us/land/staff/lar/LAR2012/lar2012index.html>.

³⁵ 36 C.F.R. Part 295.

³⁶ U.S. Dept. of Agriculture, Forest Service, “Travel Management; Designated Routes and Areas for Motor Vehicle Use,” 70 *Fed. Reg.* 68264-68291 (November 9, 2005), codified at 36 C.F.R. §212. For additional information, see also the FS Travel Management & Off-Highway Vehicle (OHV) Program at <http://www.fs.fed.us/recreation/programs/ohv/index.shtml>.

³⁷ 36 C.F.R. §212.5.

³⁸ 36 C.F.R. §212.51.

³⁹ 36 C.F.R. §212.81.

⁴⁰ This information was provided by the Forest Service Legislative Affairs Office, on December 6, 2012.

⁴¹ These figures are based on an estimated 194 million acres of NFS land, although a more recent FS estimate (September 30, 2012) was 193 million acres. For the 2008 data, see <http://www.fs.fed.us/recreation/programs/ohv/Summary2008.pdf>.

⁴² “Snowmobiles will not be governed as off-road vehicles, USFS rules,” *Land Letter*, March 31, 2011, at <http://www.eenews.net/Landletter/print/2011/03/31/16>.

⁴³ *Winter Wildlands Alliance v. U.S. Forest Service*, No. 1:11-cv-586 (D. Idaho 2011) (*complaint*). See also John Miller, “Powder struggle: Backcountry skiers want to force U.S. Forest Service to manage snowmobiles,” *AP Newswire*, November 13, 2012.

obey the rules and restrict off-highway uses at a time when other landowners and other federal and state agencies are reducing similar recreational access to their lands. The conflicts between interests continue to persist and may be escalating, in part because of the lack of past efforts to regulate OHV use.⁴⁴

In April 2012, the FS finalized new regulations for land and resource management planning for the National Forest System.⁴⁵ Although access affects land and resource use and management, the new planning regulations did not specifically address transportation planning. The FS noted that the 2012 rule generally did not address management of particular activities or uses, such as forest transportation systems, because separate regulations govern specific uses.⁴⁶

Tensions over road and trail closures continue to persist. Many of the completed travel management plans have been challenged for either being too restrictive or not restrictive enough.⁴⁷ The Forest Service has prevailed on some challenges but lost on others.⁴⁸ In addition, some groups have cited an 1866 statute known as “R.S. 2477” as providing county primacy in determining road access to federal lands.⁴⁹

The FS generally agreed with the findings in the GAO’s 2009 report on OHV use on federal lands, according to the FS comments on the draft report.⁵⁰ One of the GAO recommendations was for the establishment of a nationwide strategy for OHV use and performance measures and timeframes for carrying out OHV goals. In response, the FS developed the Route and Area Designation Implementation Guide in 2010.⁵¹ As of December 2012, the FS was in the process of developing performance measures for OHV goals, and planned to complete and implement the measures by 2014.⁵² In response to the GAO recommendation to improve communication with the public about OHV use, the FS established an interactive travel map on their website with improved information about which roads and trails are available for OHV use on national forest lands.⁵³ In response to the GAO recommendation to enhance law enforcement of OHV use, the FS examined fines for OHV related violations and is considering the feasibility of a system-wide standard for fine amounts.⁵⁴

⁴⁴ See Adams and McCool, “Finite Recreation Opportunities”.

⁴⁵ 77 *Fed. Reg.* 21162-21276 (April 9, 2012).

⁴⁶ 77 *Fed. Reg.* 21183 (April 9, 2012).

⁴⁷ See “Green groups defend agency’s closure of off-highway vehicle roads in Nev.,” *E&E News* (October 3, 2012), at <http://www.eenews.net/eenewspm/2012/10/03>, “OHV plan for Santa Fe National Forest draws fire from all sides,” *Greenwire* (July 2, 2012), at <http://www.eenews.net/greenwire/2012/07/02>, and Nancy Lofholm, “County Lands in Feud With Forest Service,” *Denver Post*, March 27, 2011, http://www.denverpost.com/search/ci_17710322.

⁴⁸ See for example, “Judge rules Forest Service motorized-vehicle plan unlawful,” *Times-News*, February 9, 2011, at <http://www.magicvalley.com>, and Rhonda Silence, “Judge rules for Forest Service on travel management plan,” *Cook County News Herald*, April 21, 2012, at <http://www.cookcountynews-herald.com>.

⁴⁹ For background on this issue, see CRS Report RS21402, *Federal Lands, R.S. 2477, and “Disclaimers of Interest.”*

⁵⁰ See the letter of June 19, 2009, from Abigail R. Kimbell, Chief of the Forest Service to Robin Nazzaro, Director, Natural Resources and Environment, GAO, published in the GAO report on pages 50-51 at <http://www.gao.gov/new.items/d09509.pdf>.

⁵¹ U.S. Forest Service, *Route and Area Designation Implementation Guide*, April 2010, http://www.fs.fed.us/recreation/programs/ohv/ohv_route_area_implementation_guide.pdf.

⁵² Based on CRS discussions with Tim Garcia, Forest Service Legislative Affairs Specialist, Forest Service, December 20, 2012.

⁵³ See <http://www.maps.fs.fed.us/TravelAccess/>.

⁵⁴ Based on CRS discussions with Tim Garcia, Forest Service Legislative Affairs Specialist, Forest Service, December 20, 2012.

Legislative Activity

A 113th Congress bill, H.R. 145, contains provisions on motorized recreation on trails in Idaho. Similar legislation was introduced in the 112th Congress.

While no general legislation on OHV activities in the national forests was introduced in the 112th Congress,⁵⁵ some measures addressed motorized recreation in areas with existing special designations. Other bills would have restricted OHV activities, explicitly or implicitly, by designating areas as wilderness.⁵⁶

Still other 112th Congress measures sought to designate other types of areas, including Special Management Areas, and govern the use of motorized vehicles in those areas. For instance, S. 1635 proposed the establishment of the Sheep Mountain Special Management Area, comprised of lands from four national forests, and generally prohibited use of motor vehicles in the area. The Subcommittee on Public Lands and Forests of the Senate Committee on Energy and Natural Resources held a hearing on S. 1635 on March 22, 2012. S. 3400 sought to establish the Hermosa Creek Special Management Area in the San Juan National Forest, and generally would have limited motorized vehicles in the area to roads and trails designated by the Secretary. As another example, S. 268 would have established several Special Management Areas and Recreation Management Areas in Montana. Motorized vehicles were generally limited to roads and trails in the new areas. However, the provisions varied, with one area generally prohibiting motorized vehicles. The bill also would have required the Secretary to report on topics including the opportunities for expanded all-terrain vehicle routes and trails across the Three Rivers District and adjacent areas on the Kootenai National Forest. The Subcommittee on Public Lands and Forests of the Senate Committee on Energy and Natural Resources held a hearing on S. 268 on May 25, 2011.

H.R. 4109 contained a variety of provisions relating to motorized recreation in the Los Padres National Forest. Among other provisions, the bill sought to establish OHV areas in the forest, with motorized vehicles generally permitted only on designated roads and trails. It also sought to establish the Condor Ridge Scenic Area, with motorized vehicles generally permitted only on roads and trails designated as of the date of enactment of the legislation. The bill also would have designated uses on certain roads and trails and added them to the forest's MVUM, and called for the Secretary of Agriculture to report on the feasibility of and interest on constructing new trails, which would be open to certain vehicles. The Subcommittee on National Parks, Forests, and Public Lands of the House Committee on Natural Resources held a hearing on H.R. 4109 on June 28, 2012.

In addition, Section 433 of H.R. 6091, the FY2013 Interior, Environment, and Related Agencies Appropriations bill, sought to prohibit the implementation or enforcement of portions of the travel management regulations in California until certain planning actions were taken. Similar provisions—including a nationwide prohibition on implementing or enforcing the regulations in FY2011—were considered in previous appropriations bills but were not enacted. The bill was reported by the House Committee on Appropriations and placed on the House calendar on July 10, 2012.

A House subcommittee held oversight hearings that in part addressed the Forest Service's implementation of the travel management regulations. A hearing on September 19, 2011, focused

⁵⁵ None of the bills identified in this section were enacted into law in the 112th Congress.

⁵⁶ See CRS Report R41610, *Wilderness: Legislation and Issues in the 113th Congress*.

on access to the national forests and the impacts of closing roads and trails to OHV use.⁵⁷ Testimony was received from local government officials, OHV user groups, and environmental conservation groups. Another hearing on November 15, 2011 focused on the travel management planning and designation process implemented by the FS.⁵⁸

Closing Summary

BLM and the FS manage motorized recreation on their lands under certain common authorities, such as executive orders, and each agency has its own regulations, policies, and other guidance. Further, while there is no single law pertaining exclusively to motorized use on all BLM or all FS lands, both agencies manage motorized recreation under broad laws providing for multiple use of agency lands as well as specific laws pertaining to individual land areas. Currently, the agencies are determining the extent to which OHVs are allowed in particular areas through their planning processes, through the development of new management plans or, more commonly, updates to existing plans. The FS also continues to develop accompanying motor vehicle use maps depicting where motor vehicle use is allowed. BLM also continues to address motorized recreation through broad travel and transportation plans that cover all modes of travel and public access. Agency determinations have been controversial in some areas. For instance, while some have expressed concern that motorized use on federal lands is too restricted to accommodate the recreating public, others have asserted that additional limits are needed to protect federal lands from resource damage.

Recent Congresses have generally addressed motorized use on BLM and FS lands in legislation focused on particular areas rather than on BLM or FS lands more generally. For instance, the 112th Congress considered BLM land bills that sought to create OHV recreation areas, and to establish more general recreation areas with specifications as to where motorized vehicles could be used. Other bills sought to convey (e.g., to a county) particular BLM lands for motorized recreation, among other uses. For the FS, bills in the 112th Congress addressed motorized recreation in areas with special designations, such as wilderness. Other FS bills sought to designate new types of areas, such as Special Management Areas, and specify the extent to which motorized vehicles could be used in these areas. The 112th Congress also held broad oversight hearings on motorized recreation on BLM and FS lands, encompassing issues including the extent to which lands are open, agency planning processes, balance among land uses, economic effects, and sources of funding.

The 113th Congress might consider a variety of issues related to motorized recreation on federal lands. One issue is whether legislation is desirable to address motorized recreation on particular BLM and FS lands, or whether any bills providing for additional special designations would set parameters on OHV use. A related issue could be whether there is a need for broader, programmatic legislation focused on motorized recreation on federal lands generally or on most or all BLM or FS lands. Provisions of any such legislation could cover an array of issues, such as access and impacts. Congress also may continue to assess agency management of motorized recreation through oversight hearings. The appropriate level of funding for motorized recreation on agency lands is likely to be addressed as part of the annual appropriations process, and Congress also could evaluate how funds for OHV management are used and whether there is a need for other sources of funding.

⁵⁷ Testimony from the hearing is available on the website of the House Committee on Natural Resources at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=258843>.

⁵⁸ Testimony from the hearing is available on the website of the House Committee on Natural Resources at <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=267922>.

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